

§ 559.3

12 CFR Ch. V (1–1–08 Edition)

entity may exercise effective operating control. An operating subsidiary may only engage in activities permissible for a federal savings association.

Ownership interest means any equity interest in a business organization, including stock, limited or general partnership interests, or shares in a limited liability company.

Service corporation means any entity that satisfies all of the requirements for service corporations in 12 U.S.C. 1464(c)(4)(B) and § 559.3 of this part and that is designated by the investing savings association as a service corporation pursuant to § 559.3 of this part. A service corporation must be organized under the laws of the state where the federal savings association's home office is located, may only be owned by savings associations with home offices in that state, and may engage in the activities identified in §§ 559.3(e)(2) and 559.4 of this part.

Subordinate organization means any corporation, partnership, business trust, association, joint venture, pool, syndicate, or other similar business organization in which a savings association has a direct or indirect ownership interest, unless that ownership interest qualifies as a pass-through investment

pursuant to § 560.32 of this chapter and is so designated by the investing savings association.

Subsidiary means any subordinate organization directly or indirectly controlled by a savings association.

Subpart A—Regulations Applicable to Federal Savings Associations

§ 559.3 What are the characteristics of, and what requirements apply to, subordinate organizations of Federal savings associations?

A federal savings association ("you") that meets the requirements of this section, as detailed in the following chart, may establish, or obtain an interest in an operating subsidiary or a service corporation. For ease of reference, this section cross-references other regulations in this chapter affecting operating subsidiaries and service corporations. You should refer to those regulations for the details of how they apply. The chart also discusses the regulations that may apply to lower-tier entities in which you have an indirect ownership interest through your operating subsidiary or service corporation. The chart follows:

	Operating subsidiary	Service corporation
(a) How may a federal savings association ("you") establish an operating subsidiary or a service corporation?	(1) You must file a notice satisfying § 559.11. Any finance subsidiary that existed on January 1, 1997 is deemed an operating subsidiary without further action on your part.	(2) You must file a notice satisfying § 559.11. Depending upon your condition and the activities in which the service corporation will engage, § 559.3(e)(2) may require you to file an application.
(b) Who may be an owner?	(1) Anyone may have an ownership interest in an operating subsidiary.	(2) Only savings associations with home offices in the state where you have your home office may have an ownership interest in any service corporation in which you invest.
(c) What ownership requirements apply?	(1) You must own, directly or indirectly, more than 50% of the voting shares of the operating subsidiary. No one else may exercise effective operating control.	(2) You are not required to have any particular percentage ownership interest and need not have control of the service corporation.
(d) What geographic restrictions apply?	(1) An operating subsidiary may be organized in any geographic location.	(2) A service corporation must be organized in the state where your home office is located.

	Operating subsidiary	Service corporation
(e) What activities are permissible?	<p>(1) After you have notified OTS in accordance with § 559.11, an operating subsidiary may engage in any activity that you may conduct directly. You may hold another insured depository institution as an operating subsidiary.</p>	<p>(2)(i) If you are eligible for expedited treatment under § 516.5 of this chapter, and notify OTS as required by § 559.11, your service corporation may engage in the preapproved activities listed in § 559.4. You may request OTS approval for your service corporation to engage in any other activity reasonably related to the activities of financial institutions by filing an application in accordance with standard treatment processing procedures at part 516, subparts A and E of this chapter.</p> <p>(ii) If you are subject to standard treatment under § 516.5 of this chapter, and notify OTS as required by § 559.11, your service corporation may engage in any activity that you may conduct directly except taking deposits. You may request OTS approval for your service corporation to engage in any other activity reasonably related to the activities of financial institutions, including the activities set forth in § 559.4(b)–(j), by filing an application in accordance with standard treatment processing procedures at part 516, subparts A and E of this chapter.</p>
(f) May the operating subsidiary or service corporation invest in lower-tier entities?	<p>(1)(i) An operating subsidiary may itself hold an operating subsidiary. Part 559 applies equally to a lower-tier operating subsidiary. In applying the regulations in this part, the investing operating subsidiary should substitute "investing operating subsidiary" wherever the part uses "you" or "savings association."</p> <p>(ii) An operating subsidiary may also invest in other types of lower-tier entities. These entities must comply with all of the requirements of this part 559 that apply to service corporations except for paragraphs (b)(2) and (d)(2) of this section.</p>	<p>(2) A service corporation may invest in all types of lower-tier entities as long as the lower-tier entity is engaged solely in activities that are permissible for a service corporation. All of the requirements of this part apply to such entities except for paragraphs (b)(2) and (d)(2) of this section.</p>
(g) How much may a federal savings association invest?	<p>(1) There are no limits on the amount you may invest in your operating subsidiaries, either separately or in the aggregate.</p>	<p>(2) Section 559.5 limits your aggregate investments in service corporations and indicates when your investments (both debt and equity) in lower-tier entities must be aggregated with your investments in service corporations.</p>

	Operating subsidiary	Service corporation
(h) Do federal statutes and regulations that apply to the savings association apply?	(1) Unless otherwise specifically provided by statute, regulation, or OTS policy, all federal statutes and regulations apply to operating subsidiaries in the same manner as they apply to you. You and your operating subsidiary are generally consolidated and treated as a unit for statutory and regulatory purposes.	(2) (i) If the federal statute or regulation specifically refers to "service corporation," it applies to all service corporations, even if you do not control the service corporation or it is not a GAAP-consolidated subsidiary. (ii) If the federal statute or regulation refers to "subsidiary," it applies only to service corporations that you directly or indirectly control.
(i) Do the investment limits that apply to federal savings associations (HOLA section 5(c) and part 560 of this chapter) apply?	(1) Your assets and those of your operating subsidiary are aggregated when calculating investment limitations.	(2) Your service corporation's assets are not subject to the same investment limitations that apply to you. The investment activities of your service corporation are governed by paragraph (e)(2) of this section and § 559.4.
(j) How does the capital regulation (part 567 of this chapter) apply?	(1) Your assets and those of your operating subsidiary are consolidated for all capital purposes.	(2) The capital treatment of a service corporation depends upon whether it is an includable subsidiary. That determination is based upon factors set forth in part 567 of this chapter, including your percentage ownership of the service corporation and the activities in which the service corporation engages. Both debt and equity investments in service corporations that are GAAP-consolidated subsidiaries are considered investments in subsidiaries for purposes of the capital regulation, regardless of the authority under which they are made.
(k) How does the loans-to-one-borrower (LTOB) regulation (§ 560.93 of this chapter) apply?	(1) The LTOB regulation does not apply to loans from you to your operating subsidiary or loans from your operating subsidiary to you. Other loans made by your operating subsidiary are aggregated with your loans for LTOB purposes.	(2) The LTOB regulation does not apply to loans from you to your service corporation or from your service corporation to you. However, § 559.5 imposes restrictions on the amount of loans you may make to certain service corporations. Loans made by a service corporation that you control to entities other than you or your subordinate organizations are aggregated with your loans for LTOB purposes.

	Operating subsidiary	Service corporation
(l) How do the transactions with affiliates (TWA) regulations (§ 563.41 of this chapter) apply?	(1) Section 563.41 of this chapter explains how TWA applies. Generally, an operating subsidiary is not an affiliate, unless it is a depository institution; is directly controlled by another affiliate of the savings association or by shareholders that control the savings association; or is an employee stock option plan, trust, or similar organization that exists for the benefit of shareholders, partners, members, or employees of the savings association or an affiliate. A non-affiliate operating subsidiary is treated as a part of the savings association and its transactions with affiliates of the savings association are aggregated with those of the savings association.	(2) Section 563.41 of this chapter explains how TWA applies. Generally, a service corporation is not an affiliate, unless it is a depository institution; is directly controlled by another affiliate of the savings association or by shareholders that control the savings association; or is an employee stock option plan, trust, or similar organization that exists for the benefit of shareholders, partners, members, or employees of the savings association or an affiliate. If a savings association directly or indirectly controls a service corporation and the service corporation is not otherwise an affiliate under § 563.41 of this chapter, the service corporation is treated as a part of the savings association and its transactions with affiliates of the savings association are aggregated with those of the savings association.
(m) How does the Qualified Thrift Lender (QTL) (12 U.S.C. 1467a(m)) test apply?	(1) Under 12 U.S.C. 1467a(m)(5), you may determine whether to consolidate the assets of a particular operating subsidiary for purposes of calculating your qualified thrift investments. If the operating subsidiary's assets are not consolidated with yours for that purpose, your investment in the operating subsidiary will be considered in calculating your qualified thrift investments.	(2) Under 12 U.S.C. 1467a(m)(5), you may determine whether to consolidate the assets of a particular service corporation for purposes of calculating your qualified thrift investments. If a service corporation's assets are not consolidated with yours for that purpose, your investment in the service corporation will be considered in calculating your qualified thrift investments.
(n) Does state law apply?	(1) State law applies to operating subsidiaries only to the extent it applies to you.	(2) State law applies to service corporations regardless of whether it applies to you, except where there is a conflict with federal law.
(o) May OTS conduct examinations?	(1) An operating subsidiary is subject to examination by OTS.	(2) A service corporation is subject to examination by OTS.
(p) What must be done to redesignate an operating subsidiary as a service corporation or a service corporation as an operating subsidiary?	(1) Before redesignating an operating subsidiary as a service corporation, you should consult with the OTS Regional Director for the Region in which your home office is located. You must maintain adequate internal records, available for examination by OTS, demonstrating that the redesignated service corporation meets all of the applicable requirements of this part and that your board of directors has approved the redesignation.	(2) Before redesignating a service corporation as an operating subsidiary, you should consult with the OTS Regional Director for the Region in which your home office is located. You must maintain adequate internal records, available for examination by OTS, demonstrating that the redesignated operating subsidiary meets all of the applicable requirements of this part and that your board of directors has approved the redesignation.

	Operating subsidiary	Service corporation
(q) What are the consequences of failing to comply with the requirements of this part?	(1) If an operating subsidiary, or any lower-tier entity in which the operating subsidiary invests pursuant to paragraph (f)(1) of this section fails to meet any of the requirements of this section, you must notify OTS. Unless otherwise advised by OTS, if the company cannot comply within 90 days with all of the requirements for either an operating subsidiary or a service corporation under this section, or any other investment authorized by 12 U.S.C. 1464(c) or part 560 of this chapter, you must promptly dispose of your investment.	(2) If a service corporation, or any lower-tier entity in which the service corporation invests pursuant to paragraph (f)(2) of this section, fails to meet any of the requirements of this section, you must notify OTS. Unless otherwise advised by OTS, if the company cannot comply within 90 days with all of the requirements for either an operating subsidiary or a service corporation under this section, or any other investment authorized by 12 U.S.C. 1464(c) or part 560 of this chapter, you must promptly dispose of your investment.

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§ 559.4 What activities are preapproved for service corporations?

This section sets forth the activities that have been preapproved for service corporations. Section 559.3(e)(2) of this part sets forth the procedures for engaging in a broader scope of activities on a case-by-case basis. You should read these two sections together to determine whether you must file a notice with OTS under § 559.11 of this part, or whether you must file an application under part 516 of this chapter and receive prior written OTS approval for your service corporation to engage in a particular activity. To the extent permitted by § 559.3(e)(2) of this part, a service corporation may engage in the following activities:

(a) Any activity that all federal savings associations may conduct directly, except taking deposits.

(b) Business and professional services. The following services are preapproved for service corporations only when they are limited to financial documents or financial clients or are generally finance-related:

- (1) Accounting or internal audit;
- (2) Advertising, marketing research and other marketing;
- (3) Clerical;
- (4) Consulting;
- (5) Courier;

- (6) Data processing;
- (7) Data storage facilities operation and related services;
- (8) Office supplies, furniture, and equipment purchasing and distribution;
- (9) Personnel benefit program development or administration;
- (10) Printing and selling forms that require Magnetic Ink Character Recognition (MICR) encoding;
- (11) Relocation of personnel;
- (12) Research studies and surveys;
- (13) Software development and systems integration; and
- (14) Remote service unit operation, leasing, ownership or establishment.
- (c) Credit-related activities.
 - (1) Abstracting;
 - (2) Acquiring and leasing personal property;
 - (3) Appraising;
 - (4) Collection agency;
 - (5) Credit analysis;
 - (6) Check or credit card guaranty and verification;
 - (7) Escrow agent or trustee (under deeds of trust, including executing and deliverance of conveyances, reconveyances and transfers of title); and
 - (8) Loan inspection.
- (d) Consumer services.
 - (1) Financial advice or consulting;
 - (2) Foreign currency exchange;
 - (3) Home ownership counseling;
 - (4) Income tax return preparation;
 - (5) Postal services;